

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Judiciary, to which was referred House Bill No. 1136, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, line 32, delete "7 and".
- 2 Page 2, line 32, after "8" insert "**and 9**".
- 3 Page 3, line 10, after "Sec. 7." insert "**(a) This section does not**
- 4 **apply:**
- 5 (1) to fees or commissions that arise from a lease, including
- 6 fees or commissions for a sale of the property, lease
- 7 expansions, or lease renewals;
- 8 (2) if a principal broker's fees or commissions have been paid
- 9 in full; or
- 10 (3) if a principal broker waives the notice requirements of this
- 11 section in writing.
- 12 (b) Not later than ten (10) days before the planned closing of a
- 13 transaction involving the sale of commercial real estate, the owner
- 14 shall notify the following persons of the date of the closing, the time
- 15 of the closing, the address of the closing, and of the name of the
- 16 closing agent, title company, or title insurance agent:
- 17 (1) One (1) or more principal brokers to whom the owner
- 18 owes fees or commissions.
- 19 (2) The closing agent, title company, or title insurance agent
- 20 involved in the transaction.

1 Notice under this subsection shall be sent by registered or certified
 2 mail, return receipt requested, or by another means of service
 3 authorized by the Indiana trial rules that provides proof that the
 4 addressee has received the notice.

5 (c) To exercise its rights under this chapter to file a lien after
 6 receipt of the notice under subsection (b), the principal broker
 7 must notify the closing agent, title company, or title insurance
 8 agent at the address in the notice of the amount of the fees or
 9 commissions owed before the time of the closing stated in the
 10 notice.

11 (d) If the principal broker does not attend the closing of a
 12 transaction involving the sale of commercial real estate, the owner
 13 shall certify in writing at the closing, under the penalties of
 14 perjury:

15 (1) that:

16 (A) the owner has notified the principal broker in
 17 accordance with subsection (b); and

18 (B) the principal broker received the notice; or

19 (2) that the principal broker has been paid in full.

20 Sec. 8."

21 Page 3, line 36, delete "8" and insert "9".

22 Page 4, line 27, delete "12(b)" and insert "13(b)".

23 Page 5, line 6, delete "9" and insert "10".

24 Page 5, line 23, delete "10" and insert "11".

25 Page 5, line 23, delete "A principal broker may bring suit to enforce
 26 a lien".

27 Page 5, delete lines 24 through 26.

28 Page 5, line 27, delete "required by this chapter".

29 Page 5, line 28, delete "two (2) years" and insert "one (1) year".

30 Page 5, line 29, delete "under this section by filing a" and insert "to
 31 foreclose the lien".

32 Page 5, line 30, delete "complaint".

33 Page 5, line 37, delete "two (2) years" and insert "one (1) year".

34 Page 5, line 38, delete "by filing a complaint" and insert "to
 35 foreclose the lien".

36 Page 6, line 1, after "(c)" insert "The foreclosure of a lien recorded

1 **under this chapter shall be conducted under the same rules and**
 2 **same procedures applicable to the foreclosure of mortgages upon**
 3 **real estate."**

4 Page 6, delete lines 14 through 29.

5 Page 6, line 30, delete "11" and insert "12".

6 Page 7, line 3, delete "12" and insert "13".

7 Page 7, line 41, delete "13" and insert "14".

8 Page 8, line 10, delete "14" and insert "15".

9 Page 8, line 18, delete "15" and insert "16".

10 Page 8, line 21, delete "12" and insert "13".

11 Page 8, line 24, delete "16" and insert "17".

12 Page 8, line 35, delete "17" and insert "18".

13 Page 9, after line 10, begin a new paragraph and insert:

14 **"Sec. 19. (a) If any party, including a principal broker, buyer,**
 15 **or buyer's mortgagee suffers a pecuniary loss as the result of an**
 16 **owner's violation of the notice or certification provisions described**
 17 **in section 7 of this chapter, the party may bring a civil action**
 18 **against the owner for the following:**

19 (1) Actual damages.

20 (2) The costs of the action.

21 (3) Reasonable attorney's fees.

22 **However, if the party establishes that the owner's violation of the**
 23 **notice or certification provisions was fraudulent, a court may**
 24 **award the party damages that do not exceed three (3) times actual**
 25 **damages.**

26 (b) It is a defense to an action brought under this section that
 27 the most recent address provided by the principal broker to the
 28 owner in the agreement, contract, or other written instrument,
 29 including a written instrument described in section 5 of this
 30 chapter, was incorrect, and as a result of the incorrect address, the
 31 principal broker did not receive the owner's notice described in

1 **section 7(b) of this chapter, and as a result the principal broker**
2 **failed to provide the notice as required in section 7(c) of this**
3 **chapter.".**

(Reference is to HB 1136 as printed January 25, 2006.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 1.

Bray

Chairperson